

**CHAPTER NO. 334**

**SENATE BILL NO. 240**

**By Herron, Kyle, Graves, Williams, Davis, Burks, Kurita, Dixon**

Substituted for: House Bill No. 415

By Fitzhugh, Maddox, Pinion, Ridgeway, Tidwell, Ronnie Cole, Todd, White, Goins, Ford, Patton, McKee, Roach, Dunn, Montgomery, Godsey, Buttry, Brenda Turner, Towns

AN ACT To amend Tennessee Code Annotated, Title 49, Chapter 6, to enact the "Tennessee School Employee Religious Liberty Act of 1999".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6 is amended by adding the following as new part 80:

Section 49-6-8001. This part shall be known and may be cited as the "Tennessee School Employee Religious Liberty Act of 1999".

Section 49-6-8002. (a) The General Assembly finds the following:

(1) Judicial decisions concerning religion, free speech and public education are widely misunderstood and misapplied;

(2) Confusion surrounding these decisions has resulted in needless litigation and conflicts;

(3) The Supreme Court of the United States has ruled that the establishment clause of the First Amendment to the United States Constitution requires that public schools neither advance nor inhibit religion. Public schools should be neutral in matters of faith and treat religion with fairness and respect;

(4) Neutrality to religion does not require hostility to religion. The establishment clause does not prohibit reasonable accommodation of religion, nor does the clause bar appropriate teaching about religion;

(5) Accommodation of religion is required by the free speech and free exercise clauses of the First Amendment as well as by the Equal Access Act (20 U.S.C. § 4071 et seq.).

(b) The purpose of this part is to create a safe harbor for schools desiring to avoid litigation and to allow the free speech and religious liberty rights of school employees to the extent permissible under the establishment clause.

Section 49-6-8003. As used in this part unless the context otherwise requires:

(1) "Establishment clause" means the portion of the First Amendment to the United States Constitution that forbids laws respecting an establishment of religion;

(2) "Free exercise clause" means the portion of the First Amendment to the United States Constitution that forbids laws prohibiting the free exercise of religion;

(3) "Free speech clause" means the portion of the First Amendment to the United States Constitution that forbids laws abridging the freedom of speech;

(4) "Public school" means any school that:

(A) Is operated by the state, a political subdivision of the state, or governmental agency within the state; and

(B) Receives state financial assistance; and

(5) "School employee" means an individual employed on a full- or part-time basis by a public school.

Section 49-6-8004. (a) A school employee shall have the right to carry out an activity described in any of subdivisions (b)(1)-(4), provided such school employee:

(1) Does not interfere with the rights of other school employees;

(2) Does not disrupt the educational process;

(3) Does not harass other persons or coerce other persons to participate in the activity; and

(4) Does not otherwise infringe on the rights of other persons.

(b) Subject to the provisions of subsection (a), a school employee shall be permitted to voluntarily:

(1) Read a religious book during non-instructional time;

(2) Quietly say grace before a meal;

(3) Wear religious garb or jewelry that does not disrupt the school environment; and

(4) Meet with other school employees for prayer or scriptural study before or after school or during the employee's lunch.

(c) No action may be maintained pursuant to this part unless the school employee has exhausted the following administrative remedies:

(1) The school employee shall state their complaint to the school's principal;

(2) If the concerns are not resolved, then the school employee shall make complaint in writing to the superintendent or director of schools with the specific facts of the alleged violation;

(3) The superintendent or director of schools shall investigate and take appropriate action to ensure that the rights of the school

employee are resolved within thirty (30) days of receiving the written complaint; and

(4) Only after the superintendent's or director of schools' investigation and action may a school employee pursue any other legal action pursuant to this part.

(d) If a right of a school employee established under this section is violated by a public school, such employee may assert the violation as a cause of action or a defense in a judicial proceeding, administrative or disciplinary hearing and obtain injunctive relief against the public school. Any such action shall be brought in the circuit or chancery court where the violation occurred or where the employee resides. Standing to assert a cause of action or defense under this section shall be governed by the Tennessee Rules of Civil Procedure and common law interpretations of such rules.

(e) A school employee prevailing in a claim brought against a public school for a violation of this section may be awarded reasonable attorney fees and costs.

Section 49-6-8005. (a) Nothing in this part shall be construed to affect, interpret, or in any way address the establishment clause.

(b) The specification of religious liberty or free speech rights in §§ 49-6-8001 - 49-6-8006 shall not be construed to exclude or limit religious liberty or free speech rights otherwise protected by federal, state or local law.

Section 49-6-8006. Nothing in this part shall be construed to support, encourage or permit a school employee to lead, direct or encourage any religious or anti-religious activity in violation of that portion of the First Amendment of the United States Constitution prohibiting laws respecting an establishment of religion.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon passage.

PASSED: May 24, 1999

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 14th day of June 1999

  
DON CONQUIST, GOVERNOR